IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12032 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIR OF RAMUBHAI RATANJI MISTRY, BHANIBEN D/O RR MISTRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12032 of 2001

MS KJ BRAHMBHATT for Petitioner Nos. 1-6

MR MANISH DAGLI Ld. AGP for Respondent No. 1

MR PRASHANT G DESAI for Respondent No. 2-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/05/2002

ORAL JUDGEMENT

Rule. Mr. Manish Dagli learned AGP and Mr. Prashant G. Desai for respondent nos. 2 and 3 waive service of rule.

2. In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ of mandamus to direct the State Government and the Town Planning Officer, Surat Municipal Corporation to publish the Town Planning Scheme No. 15 (Fulpada) (First Variation) Surat in the Official Gazette and then to submit the same to the State Government for sanction, and thereafter to hand over the vacant and peaceful possession of Final Plot No.12 admeasuring 3208 sq. mtrs. to the petitioner after the aforesaid variation to be sanctioned by the State Government.

3. The facts leading to filing of the present petition, briefly stated, and as averred by the petitioners, are as under :-

3.1 The present petitioners are the daughter and heirs of the deceased son of Ramubhai Ratanji, who was the owner of the land bearing Survey No. 106/3 admeasuring 4249 sq. mtrs. situated in village Fulpada, Taluka Chhoryasi of Surat District. Under the provisions of the Gujarat Town Planning and Urban Development, Act,1976 (hereinafter referred to as "the Act"), the Town Planning Scheme No.15 (Fulpada) Surat came to be published. In the said scheme, the aforesaid land was given Original Plot no.12 and against the said Original Plot admeasuring 4249 sq. mtrs, Final Plot no. 12 admeasuring 3208 sq. mtrs. came to be allotted to Ramubhai Ratanji under the redistribution statement. The said scheme came to be sanctioned by the State Government on 1/1/1987.

3.2 It is the petitioner's case that when Ramubhai Ratanji learnt that the land bearing Final Plot No.12 was not to be allotted to him in the preliminary Town Planning Scheme and it was decided to pay him only compensation, he filed Special Civil Application No. 7116 of 1990 making a grievance that his so called consent for surrendering Final Plot No.12 was taken under coercion and, therefore, the said alleged consent should not be acted upon. That Special Civil Application No. 7116 of 1990 came to be disposed of with a direction to the State Government to consider the modification pointed out by Ramubhai Ratanji in the T.P.Scheme which was yet not finalized. Therefore, Ramubhai Ratanji made a representation. However, the preliminary T.P.Scheme came to be sanctioned by the State Government on 12/3/1992. In the said preliminary scheme, no land was to be allotted to the Ramubhai Ratanji. Ultimately, the State Government requested the Surat Municipal Corporation on

18/7/1996 to look into the matter and consider variation of the scheme under Section 71 of the Act. Before that exercise could be undertaken, Ramubhai Ratanji expired on 13/4/1997 leaving behind the present petitioners as heirs and legal representatives.

3.3 Thereafter, the Town Planning Committee of the Surat Municipal Corporation passed Resolution dated 11/6/1997 (Anneuxre-D) authorizing the Municipal Commissioner to make appropriate request before the State Government for variation of the scheme. The Director of Planning of the Corporation forwarded the said Resolution along with the proposal to the State Government on 31/7/1997 (Annexure-E). Final Town Planning Scheme No. 15 (Fulpada) Surat was sanctioned by the State Government on 19/5/1998, but in the said scheme also, no land was allotted to the petitioners. Thereafter, the Town Planner, Surat sought approval of the State Government on 16/1/2000 (Annexure-F) for variation of the scheme under Section 71 of the Act. On 23/2/2000, the State Government granted the approval for variation under Section 71 of the Act.

3.4 In view of the above, the exercise for variation of the scheme came to be undertaken by following the procedure de-novo under Sections 41 and 42 of the Act. On 30/6/2000 the Surat Municipal Corporation in consultation with the Chief Town Planning Officer declared its intention to make a variation in the scheme in respect of the land to be allotted to the petitioner. That declaration came to be published in the Official Gazette dated 17/7/2000. As per the provisions of Section 42 (1) of the Act, within 9 months from the date of declaration of the intention to make the above variation (within 9 months from 30/6//2000) i.e. by 31/3/2001, the Corporation was required to make the draft scheme with variation. The Corporation passed Resolution dated 31/3/2001 which is at Annexure-13. As per the said Resolution, the Corporation resolved to make the variation in such a manner that the petitioner be allotted land out of Final Plot No.114 and to authorize the Municipal Commissioner to do the needful. In the meantime, since the 9 month time limit was expiring, the Municipal Commissioner had already requested the State Government, by his letter dated 19/3/2001, to extend the period specified by Section 42(1) of the Act.

3.5 It appears that the State Government took unreasonably long time to consider that request dated 19/3/2001 received along with the Chief Town Planner's letter dated 28/3/2001 (as reflected in the preamble to

the Government letter dated 20/7/2001). By the communication dated 20/7/2001 (Annexure-11), the State Government extended the time limit for making the draft scheme by another three months upto 29/6/2001, without realizing that the said date had already gone by the time the decision was communicated on 20/7/2001. It appears that in view of the above, the Corporation was not in a position to publish the draft scheme as per the Resolution dated 31/3/2001 containing variation for allotment of the land to the petitioner.

3.6 Thereafter, the matter came to be considered by the Town Planning Committee of the Corporation on 10/12/2001 when it passed a Resolution (Annexure-15), that in view of the fact that Ramubhai Ratanji had given consent on 28/11/1988 for surrendering his entire land under the T.P.Scheme, no variation was required to be made and the matter was required to be closed. The petitioner was informed accordingly vide Commissioner's letter dated 11/12/2001 and the State Government was also informed by letter dated 2/1/2002.

3.7 In the present petition filed in December,2001, the petitioners, who are the heirs of Ramubhai Ratanji, have challenged the aforesaid Government communication dated 20/7/2001 and the Town Planning Committee Resolution dated 10/12/2001.

4. Ms. K.J.Brahmbhatt learned counsel for the petitioners has made the following submissions:-

4.1 When the Corporation had already declared the intention under Section 41(1) of the Act for preparing draft scheme for variation of the earlier scheme i.e. for allotting another plot to the petitioners in lieu of plot which the petitioners had lost and when the State Government was requested on 19/3/2001 to extend the time limit (expiring on 30/3/2001) under Subsection (1) of Section 42 of the Act, and when the State Government found that a case was made out for extension of the time limit by three months, the said extension must be construed as extension from the date of communication of the decision to the Surat Municipal Corporation. There was non-application of mind on the part of respondent no.1 in not realizing that by granting the extension upto 29/6/2001 and communicating the same by letter dated 20/7/2001, the entire exercise of variation was rendered nugatory.

4.2 The Resolution passed by the Town Planning Committee of the Corporation on 10/12/2001 is merely

based on the alleged consent given by the petitioner in the year 1988 which the petitioner has been disputing all along and when the Corporation itself had passed the Resolution on 31/3/2001 to allot another final plot to the petitioner, there was no justification for taking a different view altogether on 10/12/2001.

5. On the other hand, Mr. Prashant G.Desai learned counsel for the Surat Municipal Corporation and Mr. Manish Dagli learned AGP for respondents nos.1 and 2 have submitted as under :-

5.1 Once the time limit of 12 months has expired from the date of publication of the declaration of the intention to make the variation i.e. 12 month period from 30/6/2000 expired on 30/3/2001, the authorities have become functus offico and for a period of three years from the date of such declaration i.e. till 30/6/2003, it would not be competent for the Corporation to declare its intention to make any variation in the T.P.Scheme.

5.2 Apart from the aforesaid legal position, when the Corporation has passed the Resolution dated 10/12/2001 on the basis that the petitioner had already given the consent for surrendering the plot, the said Resolution did not suffer from any illegality.

6. Before dealing with the rival submissions, reference is required to be made to the relevant provisions of Sections 41, 42 and 71 of the Act which read as under (with the dates in the instant case in the brackets) :-

Section 41

"41.(1) Before making any town planning scheme under the provisions of this Act in respect of any area, the appropriate authority in consultation with the Chief Town Planner may, be resolution, declare its intention to make such a scheme in respect of such area. (30/6/2000)

(2) Within twenty-one days from the date of such declaration (hereinafter referred to as the declaration of intention to make a scheme), the appropriate authority shall publish it in the prescribed manner and shall despatch a copy thereof alongwith a plan showing the area which it proposes to include in the town planning scheme to

the State Government. (17/7/2000)

(3) A copy of the plan despatched to the State Government under subsection (2) shall be open to the inspection of the public during office hours at the office of the appropriate authority.

42.(1) Within nine months from the date of the declaration of intention to make a scheme under section 41, the appropriate authority shall make a draft scheme of the area in respect of which the said declaration has been made and publish the same in the Official Gazette, alongwith the draft regulations for carrying out the provisions of the scheme: (31/3/2001)

Provided that on application by the appropriate authority in that behalf, the State Government may, from time to time, by notification, extend the aforesaid period by such period or periods, as may be specified therein, so however, that the period or period so extended shall not in any case exceed three months in the aggregate. (30/6/2001)

(2) If the draft scheme is not made and published by the appropriate authority within the period specified in subsection (1) or within the period extended under the proviso to that subsection, an officer appointed by the State Government may make and publish in the Official Gazette, a draft scheme for the area in respect of which the declaration of intention to make a scheme has been made within a period of nine months from the date of the expiry of the aforesaid period or the extended period, as the case may be. (31/3/2002)

(3) If such publication is not made by the officer appointed under subsection (2), the declaration of intention to make a scheme shall lapse and for a period of three years from the date of such declaration, it shall not be competent for the appropriate authority to declare its intention to make any town planning

scheme for the said area or for any part thereof. (30/6/2003)

(emphasis supplied)

Section 71

Notwithstanding anything contained in section 70, (conferring power on State Government to vary the scheme on ground of error, irregularity or informality, if variation is not substantial) a town planning scheme may at any time be varied by a subsequent scheme made, published and sanctioned in accordance with the provisions of this Act.

7. Having heard the learned counsel for the parties, it appears to the Court that when the Corporation itself had declared the intention to make a variation in the scheme by publishing its declaration dated 30/6/2000 in the Gazette dated 17/7/2000 and the Corporation itself had requested the State Government vide letter dated 19/3/2001 to extend the period of 9 months under the proviso to Section 42(1) of the Act and when the State Government itself found the request being reasonable, merely because of some administrative inadvertence or lapse such extension was not communicated to the Corporation so as to enable the Corporation to act upon it within the extended time limit, the communication dated 20/7/2001 will have to read reasonably so as to enable the Corporation to exercise its powers under Subsection (1) of Section 42 of the Act. The respondents have not even explained as to why the State Government did not exercise its power under Subsection (2) of Section 42. The provision required the State Government to make the draft scheme (with variation as in the instant case) within 9 months from 29/6/2001 i.e. 9 months from the expiry of the extended date under the proviso to Subsection (1) of Section 42 of the Act. Accepting the submission made on behalf of the respondents that the extended time limit expired on 29/6/2001 and, therefore, nothing can be done now would only mean giving premium to the respondent authorities for inadvertence or non-application of mind on the part of the State Government in not communicating extension to the appropriate authority immediately or within a reasonable time from the date of expiry of the 9 month period, although the Corporation had already prayed for extension before the expiry of the 9 month period.

Accordingly, it will have to be directed that

respondents nos. 2 and 3 i.e. appropriate authorities under the Act shall consider making of draft town planning scheme of the Fulpada area, with regard to the consideration of the petitioner's request for allotment of the plot to the petitioners, within a period of three months from the date of receipt of the writ of this Court.

8. Coming to the second submission made on behalf of the respondent authorities, since the matter is being remanded to respondent nos.2 and 3 for considering the variation requested by the petitioner under Subsection (1) of Section 42 within the extended time limit as aforesaid, it is not necessary for the Court to examine this aspect on merits and it will be open to respondents nos. 2 and 3 to examine the petitioner's request in light of all the relevant facts and circumstances. It will be open to the petitioner to make any further representation on the question of the alleged consent given by Ramuji Ratanji or his power of attorney holder. The Court express no opinion on this aspect.

9. In view of the above discussion, the petition is partly allowed. The impugned Resolution dated 10/12/2001 is hereby quashed and set aside and the respondents are directed to treat the letter dated 20/7/2001 (Annexure-11 to the reply affidavit) by treating the three month extension as operative from the date of receipt of the writ of this Court, and to consider the exercise of powers under Subsections (1) and (2) of Section 42 of the Act on that basis in light of the observations made in this judgement. If the petitioner makes any further or additional representation on the question of alleged consent given by the Ramuji Ratanji and/or a power of attorney holder by 31st May,2002, the same shall also be considered by the respondents.

10. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah,J.)

(vipul)